

**Summary**  
**Testimony of Donald P. Gill, President & CEO, First National Bank of Ipswich,**  
**Ipswich, MA**  
**On Behalf of the Massachusetts Bankers Association**

**Federal Deposit Insurance Corporation Public Hearing Regarding**  
**the Federal Deposit Insurance Application of the Proposed WalMart Bank**  
**Monday, April 10, 2006**  
**Arlington, Virginia**

Our statement focuses on the First National Bank of Ipswich's business relationship with Wal-Mart as well as the broader public policy issues raised by the Wal-Mart Bank application for deposit insurance.

Wal-Mart has attempted to gain control of a bank either directly or indirectly several times in recent years. While the company claims to have changed its strategy and is no longer interested in retail banking, the application before you does not prevent Wal-Mart from offering retail banking services in the future. If the application is approved, it will have a serious impact on consumers and small businesses as well as create significant competitive disadvantages for banks throughout Massachusetts and New England, particularly small community banks.

**First National Bank of Ipswich Wal-Mart Branches**

In 2001, FNBI entered into a contract to operate three branches in Wal-Mart stores in southern New Hampshire. The contract prohibited Wal-Mart from offering competing financial services in these stores and ensured that we were the exclusive provider of banking services in these locations. Unfortunately, virtually all of these promises were broken. Because of this, we decided not to renew any of the leases for our branches in the Wal-Mart stores.

**Massachusetts Check Cashing Application**

Wal-Mart recently applied for check cashing licenses in 44 stores in Massachusetts. We view the company providing check cashing services (which are already available in 44 states), wire transfers, and money orders appears to be the first steps in creating a Wal-Mart brand on banking and financial services products.

**Separation of Banking and Commerce**

Wal-Mart's application for deposit insurance threatens the longstanding prohibition on the mixing of banking and commerce. Congress reaffirmed the long-standing prohibition on the mixing of banking and commerce with the enactment of the Gramm-Leach-Bliley Act of 1999. Granting Wal-Mart an ILC charter will undermine Congressional intent and we strongly believe that Congress, not the banking regulators, must consider any changes to this important statute.

### **ILC Loophole**

As the FDIC considers Wal-Mart's application, we believe it is also important to consider the intent of Congress when the exceptions for limited purpose banks or "nonbank banks" were put into law. Ken Ehrlich, an MBA Associate Member attorney with Nutter, McClennan & Fish, LLP has done some interesting research into the legislative history of the ILC exemption that raises questions as to the intent of Congress in granting ILC greater powers than other nonbank banks.

We have attached additional information on the legislative history to our testimony.

### **FDIC's State Activities Rule**

We also urge you to consider the impact that the recently proposed FDIC rule on the activities of state-chartered banks will have on a potential Wal-Mart bank. Because the ILC charter is a state charter, Wal-Mart will gain the authority to offer any banking service permitted under Utah law in every state in the nation if the FDIC enacts this rule.

### **Conclusion**

Our nation's economy has thrived over the years, in large part because of our well-regulated banking system. Wal-Mart's application for deposit insurance poses an unacceptable risk to the US banking system. Allowing a commercial entity of this size to own and operate a bank, threatens the deposit insurance fund, other banks, and American consumers and taxpayers. We urge you to reject the application.

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**Federal Deposit Insurance Corporation Public Hearing Regarding  
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Monday, April 10, 2006**

Thank you for the opportunity to testify today. My name is Don Gill and I am President and CEO of the First National Bank of Ipswich (FNBI), headquartered in Ipswich, Massachusetts. First National Bank of Ipswich is a \$400 million, community bank with 11 branches throughout northeastern Massachusetts and southern New Hampshire. Until recently, FNBI also operated branches in three Wal-Mart stores.

I also serve as Treasurer of the Massachusetts Bankers Association (MBA), a trade association representing 210 commercial, savings, cooperative, and savings and loan members throughout Massachusetts and New England. My statement focuses on both FNBI's relationship with Wal-Mart as well as the broader public policy issues raised by the Wal-Mart Bank application for deposit insurance.

As you know, Wal-Mart has attempted to gain control of a bank either directly or indirectly several times in recent years. While the company claims to have changed its strategy and is no longer interested in retail banking, the application before you does not prevent Wal-Mart from offering retail banking services in the future. If the application is approved, it will have a serious impact on consumers and small businesses as well as create significant competitive disadvantages for banks throughout Massachusetts and New England, particularly small community banks.

**First National Bank of Ipswich Wal-Mart Branches**

One of the arguments Wal-Mart has made in support of their application for deposit insurance has been that the company will only use the Industrial Loan Company (ILC) charter to process credit and debit card transactions and conduct other back office operations. To bolster this argument, Wal-Mart claims that it is no longer interested in entering the retail banking business and that it is actively pursuing partnerships with community banks. According to Wal-Mart, there are 1,150 branches representing 300 banks in its stores with 250 more on the way. The company has stated that some of these branch leases are valid until 2024.

As a banker who once had a business relationship with Wal-Mart from 2001 until 2006, I can honestly say that I do not trust this change of heart. In 2001, FNBI entered into a contract to operate three branches in Wal-Mart stores in southern New Hampshire. The contract prohibited Wal-Mart from offering competing financial services in these stores and ensured that we were the exclusive provider of banking services in these locations. Unfortunately, virtually all of these promises were broken.

The problems started when Wal-Mart began offering services such as money orders and check cashing in these stores. Signs went up at every register and customer service counter informing customers that checks could be cashed for a \$3 fee. Even though many Wal-Mart employees had been banking with us in these branches, the company actively encouraged these employees to cash their checks at Wal-Mart instead of establishing deposit relationships at the FNBI branch.

Similarly, H&R Block had also been operating in these three stores for the last three years. While this is not directly related to our banking business since we do not offer tax preparation services, this is further evidence of Wal-Mart's interest in offering financial services products in its stores.

Finally, our contract with Wal-Mart guaranteed that FNBI would be the only bank in these stores. Unfortunately, one of our branch managers entered the store one day only to find a table near the entrance staffed by several representatives from a large, regional bank. They were offering to sign up Wal-Mart customers for bank accounts at their institution, within sight of our branch. Our complaints to Wal-Mart about this situation were largely ignored. Because of the history of broken promises, we decided not to renew any of the leases for our branches in the Wal-Mart stores.

### **Massachusetts Check Cashing Application**

As Wal-Mart pursues its ILC bank application at the federal level claiming no interest in retail banking authority, is it merely a coincidence that they are now applying for check cashing licenses in 44 stores in Massachusetts? Clearly, Wal-Mart remains interested in offering retail financial services. Providing check cashing services (which are already available in 44 states), wire transfers, and money orders appears to be the first steps in creating a Wal-Mart brand on banking and financial services products.

While we concede that Wal-Mart's pricing is extremely competitive, I hope we all can agree that their motivation for such cannibalistic pricing is not altruistic. In fact, their check-cashing model throughout the country can be summed up as making it easier for consumers to spend their hard-earned paycheck at Wal-Mart rather than saving it in a bank account. In Massachusetts, housing affordability is exacerbated by the lack of savings for a down payment. From a public policy perspective, do we want to perpetuate this problem by allowing Wal-Mart the retailer/bank to encourage spending versus saving?

Based on my own institution's experiences with Wal-Mart, I strongly believe that if the deposit insurance application is approved, it is only a matter of time before Wal-Mart enters the retail banking business in full force.

### **Separation of Banking and Commerce**

Wal-Mart's application for deposit insurance threatens the longstanding prohibition on the mixing of banking and commerce. Congress reaffirmed the long-standing prohibition on the mixing of banking and commerce with the enactment of the Gramm-Leach-Bliley Act of 1999. Granting Wal-Mart an ILC charter will undermine Congressional intent and we strongly believe that Congress, not the banking regulators, must consider any changes to this important statute. There are important reasons for the prohibition on the mixing of banking and commerce: preventing conflicts of interest and ensuring the safety and soundness of our banking system. As we've pointed out, Wal-Mart already subsidizes its check cashing and wire transfer business to lure consumers into their stores to spend more money on retail goods.

If Wal-Mart's application is approved and the company enters the retail banking business in the future, credit decisions at Wal-Mart banks could be based on the business considerations of their retail stores, not the creditworthiness of the borrower. If Wal-Mart succeeds in eliminating community banks from a market, small businesses would be forced to seek banking services from their largest competitor. Conversely, the Wal-Mart bank might also extend credit improperly to the retail side of the company at a time when the retail side was having financial difficulties. This puts the deposit insurance fund at risk and threatens the safety and soundness of the banking system.

The sheer size of Wal-Mart and the company's reach into thousands of cities and towns throughout the nation will only exacerbate these conflicts. If Wal-Mart were to open a branch in every one of its stores, there would be more than 3,700 new bank branches, creating a huge financial institution with nationwide reach almost overnight. These conflicts and the danger to our financial system as a whole are precisely why Congress has upheld the separation of banking and commerce.

### **ILC Loophole**

As the FDIC considers Wal-Mart's application, I think it is also important to consider the intent of Congress when the exceptions for limited purpose banks or "nonbank banks" were put into law. Ken Ehrlich, an MBA Associate Member attorney with Nutter, McClennan & Fish, LLP has done some interesting research into the legislative history of the ILC exemption that raises questions as to the intent of Congress in granting ILC greater powers than other nonbank banks.

Specifically, the US Senate report and the final Conference Committee report on the Competitive Equality Banking Act of 1987 (CEBA) indicate that Congress did not intend any special purpose bank to have transaction account capability. Section 2 of the Bank Holding Company Act (as amended by CEBA) states that these institutions may not accept “demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others.”

However, the language in the statute specific to ILCs omits the words “or deposits”, therefore allowing ILCs to offer NOW accounts which are considered savings/deposit accounts. This omission leaves an enormous loophole for Wal-Mart to enter the retail banking market in the future. I have attached additional information on the legislative history to my testimony.

### **FDIC’s State Activities Rule**

As you consider Wal-Mart’s application, we also urge you to consider the impact that the recently proposed FDIC rule on the activities of state-chartered banks will have on a potential Wal-Mart bank. Because the ILC charter is a state charter, Wal-Mart will gain the authority to offer any banking service permitted under Utah law in every state in the nation if the FDIC enacts this rule.

This would put state-chartered institutions in states with more restrictive state banking laws at a significant competitive disadvantage to Wal-Mart. In addition, states would be unable to prevent Wal-Mart from offering services such as payday lending that they have prohibited other financial institutions from providing.

### **Conclusion**

Our nation’s economy has thrived over the years, in large part because of our well-regulated banking system. One need only look at the problems in the Japanese economy to see the potential harm of allowing commercial firms to own banks. Wal-Mart’s application for deposit insurance poses an unacceptable risk to the US banking system. Allowing a commercial entity of this size to own and operate a bank, threatens the deposit insurance fund, other banks, and American consumers and taxpayers. We urge you to reject the application.

Thank you again for the opportunity to testify. I would be happy to answer any questions.

## COMPETITIVE EQUALITY BANKING ACT OF 1987

JULY 31, 1987.—Ordered to be printed

Mr. ST GERMAIN, from the committee of conference,  
submitted the following

### CONFERENCE REPORT

[To accompany H.R. 27]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 27) to facilitate the provision of additional financial resources to the Federal Savings and Loan Insurance Corporation and, for purposes of strengthening the reserves of the Corporation, to establish a forbearance program for thrift institutions and to provide additional congressional oversight of the Federal Home Loan Bank Board and the Federal home loan bank system, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

#### *SECTION 1. SHORT TITLE; TABLE OF CONTENTS.*

(a) *SHORT TITLE.*—*This Act may be cited as the "Competitive Equality Banking Act of 1987".*

(b) *TABLE OF CONTENTS.*—

#### *TITLE I—FINANCIAL INSTITUTIONS COMPETITIVE EQUALITY*

- Sec. 100. Short title.*
- Sec. 101. Amendments to the Bank Holding Company Act of 1956.*
- Sec. 102. Amendments to the Federal Reserve Act.*
- Sec. 103. Securities affiliations of nonmember insured banks.*
- Sec. 104. Amendments to savings and loan holding company provisions of the National Housing Act.*
- Sec. 105. Amendment to the Federal Home Loan Bank Act.*
- Sec. 106. Securities affiliations of FSLIC insured institutions.*
- Sec. 107. Mutual holding company amendments.*
- Sec. 108. Leasing authority of national banks.*

- Sec. 611. Civil liabilities.
- Sec. 612. Parity in clearing.
- Sec. 613. Effective dates.

#### **TITLE VII—CREDIT UNION AMENDMENTS**

- Sec. 701. Short title.
- Sec. 702. Second mortgage and home improvement loans.
- Sec. 703. Ownership interest.
- Sec. 704. Faithful performance.
- Sec. 705. Membership officers.
- Sec. 706. Nonparticipation.
- Sec. 707. Property acquisition flexibility.
- Sec. 708. Treatment of NCUAB funds.
- Sec. 709. Technical and clarifying amendments; removal and prohibition authority.
- Sec. 710. Effect of removal or suspension.
- Sec. 711. Imposition of conservatorship.
- Sec. 712. Reduction in State comment waiting period.
- Sec. 713. Authority as conservator.
- Sec. 714. Liquidation proceedings.
- Sec. 715. Transfer of FTC jurisdiction to NCUAB.
- Sec. 716. Assets which may be pledged.

#### **TITLE VIII—LOAN LOSS AMORTIZATION**

- Sec. 801. Loan loss amortization for agricultural banks.

#### **TITLE IX—FULL FAITH AND CREDIT OF FEDERALLY INSURED DEPOSITORY INSTITUTIONS**

- Sec. 901. Reaffirmation of security of funds deposited in federally insured depository institutions.

#### **TITLE X—GOVERNMENT CHECKS**

- Sec. 1001. Report on difficulty in cashing Treasury checks.
- Sec. 1002. Time limit on payment of Treasury checks.
- Sec. 1003. Cancellation of Treasury checks.
- Sec. 1004. Limitation on reclamation actions and claims.
- Sec. 1005. Regulations.
- Sec. 1006. Effective date.

#### **TITLE XI—INTEREST TO CERTAIN DEPOSITORS**

- Sec. 1101. Interest to certain depositors.

#### **TITLE XII—MISCELLANEOUS PROVISIONS**

- Sec. 1201. High yield bond study.
- Sec. 1202. Study of competitive issues in the payments mechanism.
- Sec. 1203. Study and reports concerning direct investments.
- Sec. 1204. Adjustable rate mortgage caps.
- Sec. 1205. Separability of provisions.

## **TITLE I—FINANCIAL INSTITUTIONS COMPETITIVE EQUALITY**

### **SEC. 100. SHORT TITLE.**

This title may be cited as the "Competitive Equality Amendments of 1987".

### **SEC. 101. AMENDMENTS TO THE BANK HOLDING COMPANY ACT OF 1956.**

#### **(a) DEFINITIONS.—**

(1) AMENDMENT TO DEFINITION OF BANK.—Section 2(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)) is amended to read as follows:

"(c) BANK DEFINED.—For purposes of this Act—

"(1) *IN GENERAL.*—Except as provided in paragraph (2), the term 'bank' means any of the following:

"(A) An insured bank as defined in section 3(h) of the Federal Deposit Insurance Act.

"(B) An institution organized under the laws of the United States, any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands which both—

"(i) accepts demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others; and

"(ii) is engaged in the business of making commercial loans.

"(2) *EXCEPTIONS.*—The term 'bank' does not include any of the following:

"(A) A foreign bank which would be a bank within the meaning of paragraph (1) solely because such bank has an insured or uninsured branch in the United States.

"(B) An insured institution (as defined in subsection (j)).

"(C) An organization that does not do business in the United States except as an incident to its activities outside the United States.

"(D) An institution that functions solely in a trust or fiduciary capacity, if—

"(i) all or substantially all of the deposits of such institution are in trust funds and are received in a bona fide fiduciary capacity;

"(ii) no deposits of such institution which are insured by the Federal Deposit Insurance Corporation are offered or marketed by or through an affiliate of such institution;

"(iii) such institution does not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others or make commercial loans; and

"(iv) such institution does not—

"(I) obtain payment or payment related services from any Federal Reserve bank, including any service referred to in section 11A of the Federal Reserve Act; or

"(II) exercise discount or borrowing privileges pursuant to section 19(b)(7) of the Federal Reserve Act.

"(E) A credit union (as described in section 19(b)(1)(A)(iv) of the Federal Reserve Act).

"(F) An institution which—

"(i) engages only in credit card operations;

"(ii) does not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others;

"(iii) does not accept any savings or time deposit of less than \$100,000;

"(iv) maintains only one office that accepts deposits; and

"(v) does not engage in the business of making commercial loans.

"(G) An organization operating under section 25 or section 25(a) of the Federal Reserve Act.

"(H) An industrial loan company, industrial bank, or other similar institution which is—

"(i) an institution organized under the laws of a State which, on March 5, 1987, had in effect or had under consideration in such State's legislature a statute which required or would require such institution to obtain insurance under the Federal Deposit Insurance Act—

"(I) which does not accept demand deposits that the depositor may withdraw by check or similar means for payment to third parties;

"(II) which has total assets of less than \$100,000,000; or

"(III) the control of which is not acquired by any company after the date of the enactment of the Competitive Equality Amendments of 1987; or

"(ii) an institution which does not, directly, indirectly, or through an affiliate, engage in any activity in which it was not lawfully engaged as of March 5, 1987, except that this subparagraph shall cease to apply to any institution which permits any overdraft (including any intraday overdraft), or which incurs any such overdraft in such institution's account at a Federal Reserve bank, on behalf of an affiliate if such overdraft is not the result of an inadvertent computer or accounting error that is beyond the control of both the institution and the affiliate.

"(I) The Investors Fiduciary Trust Company, located in Kansas City, Missouri, so long as such institution—

"(i) engages only in trust, fiduciary, and agency activities in which it was lawfully engaged on March 5, 1987;

"(ii) engages in such activities only at the same number of locations at which such activities were conducted on such date;

"(iii) does not accept demand deposits other than demand deposits which are maintained by such institution in—

"(I) a trust or fiduciary capacity;

"(II) the institution's capacity as a custodian or as a paying, transfer, shareholder servicing, securities clearing, escrow, or dividend disbursing agent; or

"(III) any capacity which is incidental to the trust or fiduciary activities of the institution;

"(iv) does not engage in the business of making commercial loans;

"(v) does not exercise discount or borrowing privileges pursuant to section 19(b)(7) of the Federal Reserve Act; and

"(vi) is not directly or indirectly controlled by any company other than a company which directly or indirectly controlled such institution on March 5, 1987.

"(J) A savings bank (as defined in section 3(g) of the Federal Deposit Insurance Act) which—

"(i) is an insured bank (as defined in section 3(h) of such Act);

"(ii) is a subsidiary of the Great Western Financial Corporation as a result of an approval in writing by the State bank supervisor of the State of New York before June 30, 1987;

"(iii) meets or exceeds the investment requirements which an insured institution must meet in order to be a qualified thrift lender under section 408(o) of the National Housing Act; and

"(iv) does not, directly, or through insurance products such savings bank receives from or provides to the Great Western Financial Corporation, engage in the sale or underwriting of insurance,

except that this subparagraph shall cease to apply with respect to such savings bank or any successor institution if any deposits of any other subsidiary or affiliate of the Great Western Financial Corporation which are subject to an assessment of an insurance premium under subsection (b) or (c) of section 404 of the National Housing Act are, directly or indirectly by any device whatsoever, transferred to or acquired by such savings bank or any successor institution which would have the effect of materially reducing such premium assessments. The exemption provided by this subparagraph shall cease to apply if Great Western Financial Corporation uses such savings bank or any successor institution as a vehicle to move such Corporation from Federal Savings and Loan Insurance Corporation insurance to Federal Deposit Insurance Corporation insurance.

"(3) DISTRICT BANK.—The term 'District bank' means any bank operating under the Code of Law for the District of Columbia."

(2) AMENDMENT TO DEFINITION OF THRIFT INSTITUTION.—Section 2(i) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(i)) is amended to read as follows:

"(i) THRIFT INSTITUTION.—For purposes of this Act, the term 'thrift institution' means—

"(1) any domestic building and loan or savings and loan association;

"(2) any cooperative bank without capital stock organized and operated for mutual purposes and without profit;

"(3) any Federal savings bank; and

"(4) any State-chartered savings bank the holding company of which is registered pursuant to section 408 of the National Housing Act."